

The State of South Carolina  
In The Supreme Court

**RECEIVED**

JUN 20 2012

Appeal From Chester Field County  
Court of Common Pleas  
The Honorable Paul M. Burch, Chief Administrative Judge

S.C. SUPREME COURT

Case No: 2012-CP-13-150

Billy Lee Lisenby JR, ..... Petitioner,

v.

State of South Carolina ..... Respondent,

Notice OF APPEAL

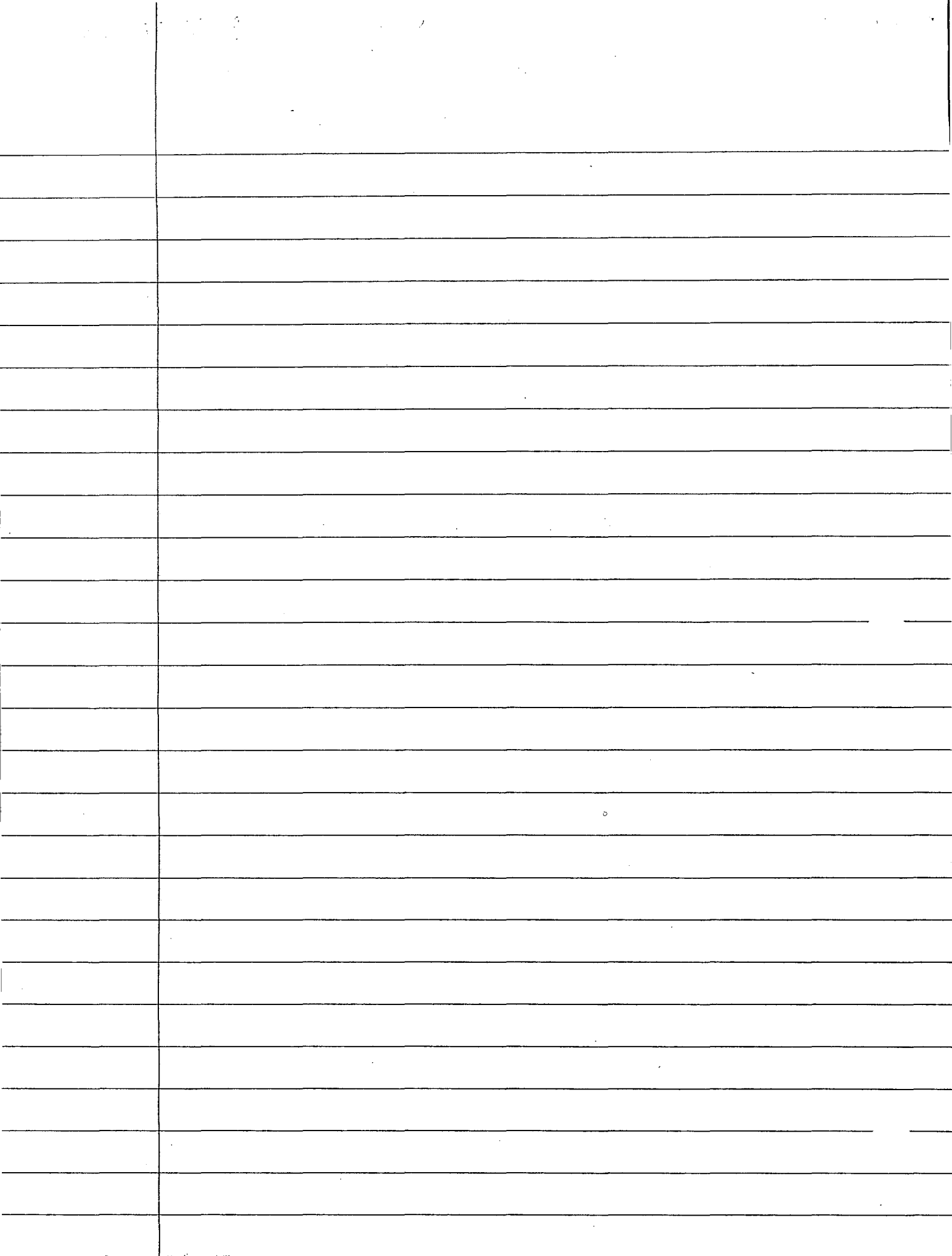
The Petitioner appeals the Honorable Paul Burch's May 7<sup>th</sup> 2012,  
order denying his Petition For Habeas Corpus. Undersigned Counsel received  
notice of entry of the order on May 21<sup>st</sup> 2012. A copy of the order on appeal  
is attached to this notice.

Respectfully Submitted,

Billy Lee Lisenby JR

Billy Lee Lisenby JR, #200273

June 3<sup>rd</sup> 2012



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PROOF OF SERVICE

I, Billy Lee Lisenby JR, certify I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the Attorney General Post Office Box 11549 Columbia S.C. 29211-1549. I further certify that all parties required by Rule to be served have been served this 3<sup>rd</sup> day of June, 2012.

*Billy Lee Lisenby JR.*

Billy Lee Lisenby JR;





a blue light and one (1) count of AWIK.<sup>1</sup> On April 25, 2008, the Honorable J. Mark Hayes, II sentenced the Applicant to consecutive terms of three (3) years for failure to stop for a blue light and ten (10) years for AWIK.

A notice of appeal was filed at the South Carolina Court of Appeals. After being advised of the consequences of his decision, the Applicant chose to voluntarily withdraw his appeal. The Court of Appeals dismissed the appeal by order dated September 2, 2008.

#### PCR

Applicant filed a PCR application on August 11, 2008 (2008-CP-13-0193). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
  - a. Failed to object to allowing the jury to view the video of the chase in North Carolina.
  - b. Failed to object to State proceeding without "taking [Applicant] through case management."
  - c. Failed to ask for mistrial/dismissal when bailiff went into jury room during deliberations.
  - d. Failed to object to jury selection in Applicant's absence.
  - e. Failed to enter Applicant's medical history into the record.
  - f. Failed to object to jury selection.
  - g. Failed to object that Applicant was charged with a crime against a person rather than a traffic violation.
  - h. Failed to dismiss herself because she had a conflict.
  - i. Failed to file pre-trial motions.
  - j. Failed to represent Applicant at a preliminary hearing.
  - k. Failed to subpoena witnesses.
2. "Denial of Case management."
3. "Bailiff went into Juries room on (3) three diffrent occassions on April 24th, 2008."
4. "Juries saw defendant in handcuffs and shackles on April 24th, 08 at approx. 6:00 PM."
5. "Defendant wasn't given an oppurtunity to view the video before trial or before the juries."

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<sup>1</sup> 2008-GS-13-0352.

6. "Misconduct by the prosecutors."
7. "Judge showed bias towards attorney didn't find attorney creditable."
8. "Pulled Jury in defendants absence."
9. "Denied Right to enter medical history onto record."
10. "Jury Prejudicial."
11. "Not having a jury of my peers."
12. "Defendant was charged and convicted of a crime against a person rather than a traffic violation."
13. "Conflict against trial counsel and she still represented defendant."
14. "Denied Due Process."
15. "Excessive Bail Clause."

The Applicant also submitted an additional six amendments to his PCR application.

An evidentiary hearing was convened on January 14, 2009 at the Darlington County Courthouse. M. Ronald McMahan, Jr., Esquire represented the Applicant. The Honorable John M. Milling denied and dismissed the Applicant's application by order dated February 6, 2009.

The Applicant filed a timely notice of appeal. On January 21, 2010, the appeal was perfected by M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense. The Respondent filed a return to the petition for writ of certiorari on July 6, 2010. That matter was dismissed by the South Carolina Supreme Court May 13, 2011.

### **Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on March 18, 2009 (8:09-705-DCN-BHH). The Respondent submitted a motion for summary judgment on August 12, 2009. On August 31, 2009, Applicant filed a motion to voluntarily dismiss his action. On September 30, 2009, the Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued a report and recommendation to: (1) grant the Applicant's motion for voluntary dismissal, (2) deny the Respondent's motion for summary judgment as moot, and (3) dismiss the habeas petition without prejudice.

**2009-CP-13-0374**

Applicant filed a PCR application on September 17, 2009 (2009-CP-13-0374). The Applicant raised the following issue:

1. "Ineffective assistance of counsel (After-Discovered Evidence)."
  - a. Trial counsel "did in fact commit perjury on several occasions during [Applicant]'s Jan. 14th, 2009 P.C.R. hearing."

Respondent filed a return and motion to dismiss, seeking to dismiss the application based on the expiration of the statute of limitations and the presumption against successive PCR applications. The Honorable Paul M. Burch issued a conditional order of dismissal dated February 5, 2010 and filed February 10, 2010. Judge Burch issued a final order of dismissal dated April 18, 2010 and filed April 26, 2010. On August 4, 2010, Judge Burch issued an order denying the Applicant's motion to alter or amend pursuant to Rule 59(e), SCRCF.

The Applicant filed a timely notice of appeal. The South Carolina Supreme Court required the Applicant – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated September 9, 2010, the Supreme Court found the Applicant failed to meet his burden in this regard.

**Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 8, 2009 (8:09-2627-DCN-SVH). The Respondent submitted a motion for summary judgment on March 8, 2010. On July 30, 2010, the Honorable Shiva V. Hodges, United States Magistrate Judge, issued a report and recommendation to: (1) dismiss the habeas petition without prejudice for failure to exhaust state remedies and (2) deny the Respondent's motion for summary judgment and the Applicant's other pending motions as

moot. On August 19, 2010, Judge Hodges dismissed the matter.

### **Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on October 1, 2010 (1:10-2609-DCN-SVH). The Respondent submitted a motion for summary judgment on April 13, 2011. On May 31, 2011, the Honorable Shiva V. Hodges, United States Magistrate Judge, issued a report and recommendation to: (1) dismiss the habeas petition without prejudice for failure to exhaust state remedies and (2) deny the Respondent's motion for summary judgment and the Applicant's other pending motions as moot. The matter was dismissed on June 15, 2011.

### **2010-CP-13-0448**

The Applicant filed a PCR application on November 15, 2010 (2010-CP-13-0448). The Applicant raised the following issue:

1. Ineffective assistance of PCR appellate counsel:
  - a. Failure to raise the most viable issues in the petition for writ of certiorari.

Respondent filed a return and motion to dismiss, seeking to dismiss the application based on the expiration of the statute of limitations and the presumption against successive PCR applications. The Honorable J. Michael Baxley issued a conditional order of dismissal dated March 7, 2011 and filed March 11, 2011. Judge Baxley issued a final order of dismissal dated May 31, 2011 and filed June 6, 2011. By order dated August 30, 2011 and filed September 8, 2011, Judge Baxley issued an order denying the Applicant's motion to alter or amend pursuant to Rule 59(e), SCRPC.

The Applicant filed a notice of appeal. By letter dated September 20, 2011, the South Carolina Supreme Court required the Applicant – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. The Court dismissed the matter

on October 25, 2011 based on Applicant's failure to show an arguable basis for maintaining his action.

### **Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (1:10-2687-DCN-SVH). The Respondent submitted a motion for summary judgment on August 5, 2011. On October 17, 2011, the Honorable Shiva V. Hodges, United States Magistrate Judge, issued a report and recommendation to dismiss the matter based on the Applicant's failure to prosecute.

### **Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (1:11-1443-DCN-SVH). That matter was dismissed January 24, 2012.

### **PCR Action**

Applicant filed a PCR on June 29, 2011. In that application, the Applicant alleged the following:

1. "Petitioner did not knowingly and intelligently waive his right to direct appeal."
2. "Ineffective assistance of appellant counsel."
3. "Denial of case management."
4. "Juries saw the defendant in handcuffs and shackles on April 24th, 2008."
5. "Defendant wasn't given an opportunity to view the video before trial or before the jurors. Denial of Brady motion."
6. "Misconduct by prosecutor and conflict with the solicitor's office."
7. "Jury prejudicial."
8. "Defendant was charged and convicted of a crime against a person rather than a traffic violation."
9. "Denied due process."
10. "Trial started in Petitioner's absences due to untrue statement by solicitor and Judge fail to check it for accuracy."
11. "Judge continued trial using a trial docket that didn't state the exact time Petitioner was due in court."

In the "Amendment to Applicant's Post-Conviction Relief" filed August 30, 2011, the Applicant raised the following additional allegations:

1. Illegal sentence:
  - a. The Conviction and sentence are in violation of the United States Constitution, South Carolina Constitution, or South Carolina law.
  - b. The Court was without jurisdiction to impose sentence.
  - c. The Court and South Carolina Department of Corrections are unlawfully holding the Applicant in custody.

Respondent filed a Return and Motion to Dismiss. The Court issued a Conditional Order of Dismissal. The court then issued a final order of dismissal which was filed January 12, 2012.

Incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the conviction. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

#### **ALLEGATIONS**

In his Petition for a Writ of Habeas Corpus, Petitioner alleges he has exhausted all state remedies. Petitioner moves "that he be released from custody." on the grounds that "The trial courts, P.C.R. Courts, and Supreme Court erred in not granting petitioner relief under § 17-24-10 sanity defense. Trial Counsel did not pursue sanity defense and P.C.R. attorney made the exact err." Lisenby claims mental health issues and that both trial counsel and PCR counsel should have explored this as a defense, and that had this been done he would have prevailed at each level.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds that the Petition for a Writ of Habeas Corpus must be summarily dismissed. "The purpose of habeas corpus is to test the legality of the prisoner's present detention." McCall v. State, 247 S.C. 15, 145 S.E.2d 419 (1965). The only remedy that can be granted is release from custody. Id. "A habeas corpus petition must support the requested relief." Gibson v. State, 329

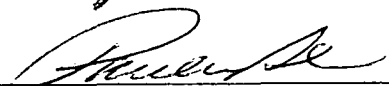
S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). The petitioner must make out a prima facie case showing he is entitled to relief, and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Id., at 40, 495 S.E.2d at 427-28. The petition must allege that petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, *cert. denied*, 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990). Id. If the petition, on its face, meets these requirements, petitioner is entitled to a hearing. Id.

In this matter, Lisenby has had multiple PCR actions and federal Habeas actions where he could have raised the very issue he raises in the instant case. Lisenby has had ample opportunity to fully litigate the matter of his sanity and medications and their application on the conduct underlying his convictions on multiple filings both in state and federal court.

Accordingly, because Petitioner has failed to state a claim upon which relief could be granted, the Petition must be summarily dismissed. See Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965) (a petition for writ of habeas corpus is properly dismissed without a hearing if it contains no allegations which warrant the issuance of the writ).

Accordingly, the Petition for Habeas Corpus is hereby **DENIED** and **DISMISSED** with prejudice.

AND, IT IS SO ORDERED this 7<sup>th</sup> day of May, 2012.

  
The Honorable Paul M. Burch  
Chief Administrative Judge  
Fourth Judicial Circuit

Bennettsville, South Carolina